

**ENTERED**

May 09, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

JOHN F. HAWKINS,

Petitioner,

V.

BOBBY LUMPKIN,

Respondent.

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CIVIL ACTION NO. 2:22-CV-00210

**ORDER ADOPTING MEMORANDUM & RECOMMENDATION**

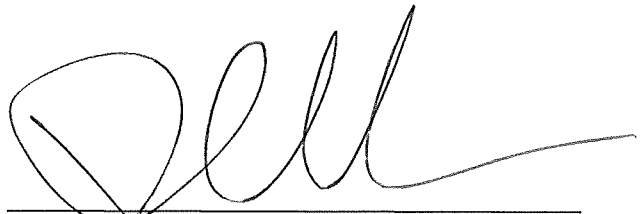
Before the Court is Magistrate Judge Mitchel Neurock's Memorandum and Recommendation ("M&R"). (D.E. 8). The M&R recommends that the Court construe Petitioner's Rule 60(b) motion as a petition for habeas relief pursuant to 28 U.S.C. § 2254 and dismiss it without prejudice to Petitioner obtaining authorization from the Fifth Circuit to file a petition in the district court. (D.E.1). The M&R additionally recommends the Court deny Petitioner's motion for appointment of counsel. (D.E. 2). The M&R further recommends the Court deny Petitioner a certificate of appealability.

The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge's M&R. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); General Order No. 2002-13. No objection has been filed. When no timely objection has been filed, the district court need only determine whether the Magistrate Judge's M&R is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam); *Badaiki v. Schlumberger Holdings Corp.*, 512 F. Supp. 3d 741, 743–44 (S.D. Tex. 2021) (Eskridge, J.).

Having reviewed the proposed findings and conclusions of the Magistrate Judge, the filings of the parties, the record, and the applicable law, and finding that the M&R is not clearly erroneous

or contrary to law, the Court **ADOPTS** the M&R in its entirety. (D.E. 8). Accordingly, the Court construes Petitioner's Rule 60(b) motion, (D.E. 1), as a petition for habeas relief pursuant to 28 U.S.C. § 2254. The Court **DENIES** Petitioner's habeas petition **without prejudice** to Petitioner obtaining authorization from the Fifth Circuit to file a petition in the district court. (D.E. 1). The Court additionally **DENIES** Petitioner's motion for appointment of counsel. (D.E. 2). Petitioner is **DENIED** a certificate of appealability.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Morales', written over a horizontal line.

DAVID S. MORALES  
UNITED STATES DISTRICT JUDGE

Dated: Corpus Christi, Texas  
May 9<sup>th</sup>, 2023